The Corporate Transparency Act: What Companies Need to Know

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On January 1, 2021, Congress passed the Corporate Transparency Act (CTA) establishing a framework for businesses to report beneficial ownership information to the federal government. Through the CTA, the federal government intends to crack down on companies conducting illegal activities by peeling back the veil of secrecy shrouding corporate ownership. The passage of the CTA marks the first time many companies will be required to report somewhat sensitive information about their owners to the federal government.

The new law requires "reporting companies" to disclose the identities of their "beneficial owners" and "applicants" to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). A reporting company is broadly defined as any corporation, limited liability company, or other similar entity established in any U.S. state or territory or foreign company registered to do business in the U.S. Although the CTA excludes numerous categories of companies, exempt companies, which include public companies, banks, and investment companies, are typically in highly regulated industries and already subject to reporting requirements of other federal agencies.

A beneficial owner is defined as any individual who, directly or indirectly: (1) exercises substantial control over the reporting company or (2) owns or controls at least 25 percent of the reporting company. Individuals excluded from this definition include minors (provided parental information is reported) and nominees, intermediaries, custodians, or agents acting on behalf of another individual. An applicant is defined as any individual who files an application to form or register the reporting company.

Reporting companies will be required to submit a report to FinCEN disclosing the name, date of birth, current address, and unique identification number (from a passport or driver's license) of each of their beneficial owners and applicants.

Companies subject to the CTA should take note of filing deadlines to avoid penalties and fines. Companies formed or registered after the FinCEN regulations go into effect must submit reports at the time of formation or registration. By contrast, existing companies must submit reports within two years after the effective date of these regulations. Additionally, upon a change in any beneficial owner information, reporting companies will be required to update this information with FinCEN no later than one year after such change.

Penalties have been established under the CTA for those who fail to comply with the reporting requirements. Any person who willfully provides false beneficial ownership information or fails to file complete or updated reports with FinCEN can face a civil penalty of up to $500 for each day that the violation continues and a fine of up to $10,000 and/or imprisonment for up to two years.

FinCEN will maintain beneficial ownership information relating to each reporting company for at least five years after the company is dissolved. While beneficial ownership information is non-public and confidential, FinCEN may disclose this information to other federal agencies and law enforcement agencies on the federal, state, and local levels under certain circumstances.

The Department of Treasury has the remainder of the year to iron out the particulars for implementing the CTA and provide clarity with its forthcoming regulations, which must be promulgated no later than January 1, 2022.

Stone Pigman is closely monitoring developments of the CTA, and our lawyers are ready and available to assist businesses of all sizes and at all stages of their life cycles.